ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the matter of	)	
	)	
Implementation of Section 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-265
	)	
	)	
Development of Competition and Diversity of Video Programming Distribution and Carriage	)	

To: The Commission

REPLY COMMENTS OF INTERNATIONAL FAMILY ENTERTAINMENT, INC.

International Family Entertainment, Inc. ("IFE"), in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the captioned proceeding (released December 24, 1992), hereby replies to certain of the comments concerning the development of competition and diversity in video programming distribution and carriage, pursuant to the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act").

If the Commission were to accept the suggestions of the Wireless Cable Association ("WCA") and the National Rural Telecommunications Cooperative ("NRTC"), programmers such as IFE would be spending their resources and time defending patently justifiable differences among their contracts in numerous hearings at the Commission, instead of making the original, innovative programs that consumers want and deserve. The burdensome and unnecessary regulations proposed by WCA and NRTC would:

- Chill cable programmers' willingness to accept investments by cable operators -- investments which have been vital to produce high-quality original programming;
- Thereby destroy the finances of the innovative programming channels that Congress has acknowledged have been so valuable to cable subscribers.

IFE implores the Commission not to accept these invitations to destroy the dynamic programming industry created by the marketplace, but instead to follow the general approach in the NPRM to allow the marketplace to function except where there is real harm to cable subscribers because of discriminatory practices.

The Damaging Approach of WCA and NRTC Would Destroy Innovative Programming

Under the approach urged by WCA and NRTC, the Commission would require any programmer in which a cable operator had made virtually any investment to justify any differences between the terms and conditions contained in any of its contracts with its cable operator investor and any of its contracts with any other multichannel video program distributor. A programmer would be subjected to these adjudicatory proceedings at which it would have the burden of proving there were justifications:

(a) Regardless of whether the alleged differences among the contracts even arguably caused harm to consumers by, for example, affecting their bills or their access to competitive packages of attractive cable programs;

(b) Regardless of whether the cable operator investor and the complaining video distributor were competitors in even one geographic market;

(c) Regardless of whether the alleged differences in terms and conditions were also generally found in contracts entered into by programmers in which no cable operator had invested;

(d) Regardless of whether any cable operator investment was significant enough to allow a cable company to control the contract policies of the programmer.

WCA and NRTC apparently believe that this nightmare regulatory regime would somehow have only "minimal impact" on cable programmers because complaints about price differences will "merely" launch hearings. But the requirement that a programmer justify at hearings any differences among its contracts, regardless of any effect on consumer welfare, would have dramatic and devastating impact. Programmers such as IFE would be spending their resources on FCC hearings to justify any differences among their contracts with different operators -- resources that should be devoted to the creation of original, new programs for consumers.

If the Commission were to impose this enormous regulatory burden, programmers such as IFE would be forced to choose between: (a) rejecting any investment by a cable operator; or (b) reconciling themselves to frequent and expensive administrative proceedings at which they would need to explain differences in contract terms and conditions that had no bearing on consumer welfare. In either case, programmers' ability to

finance new programs would be gravely imperiled. The Congressional intent of the Cable Act was certainly not to destroy the program creators and innovations developed in the marketplace in the last several years, and the Commission's regulations should not have this disastrous result.

The Commission's Regulations Should Not Apply Retroactively to Existing Contracts

IFE also urges the Commission to reject certain commenters' suggestions that it "reform" existing contracts between programmers and cable operators. The Commission properly concluded in paragraph 27 of the NPRM that any restrictions developed to implement Section 628 of the Cable Act should not be applied retroactively against existing contracts.

Once again, the commentators have failed to appreciate the devastating impact that their proposals would have on the production of new and innovative programming in the marketplace. IFE and other programmers have relied on the terms of their existing contracts with distributors, with their contract rates and increases, in making long-term investments in new and existing series. If the Commission's restrictions on contracts were to be retroactive, it could jeopardize IFE's plans and investments for the future, thereby harming the intended beneficiaries of the Act -- the consumers.

Moreover, the prices and related terms and conditions in many of IFE's existing contracts were negotiated as a quid pro quo for various other contract provisions. Thus, the Commission cannot simply "reform" price provisions, without changing or

subjecting to renegotiation or litigation many of the other provisions in these contracts. Indeed, many contracts might well be abrogated as the result of disputes concerning the ramifications of price "reformation" by the government, and substantial disruption of the market would therefore occur. In order to avoid this sort of potentially catastrophic disruption, IFE strenuously urges the Commission to apply its rules only to new contracts.

CONCLUSION

The Commission should maintain its focus on real harm to cable subscribers -- to competition -- and reject certain commenters' suggestions for a regulatory regime that would divert money and resources away from program production to administrative hearings that have nothing to do with consumer welfare.

Louis A. Isakoff, Esq.
General Counsel
International Family
Entertainment, Inc.
1000 Centerville Turnpike
Virginia Beach, VA 23463

Date: February 16, 1993

B:2045-000.K

CERTIFICATE OF SERVICE

I, Louis A. Isakoff, hereby certify that I have this 16th day of February, 1993, caused to be hand delivered copies of the foregoing "**REPLY COMMENTS OF INTERNATIONAL FAMILY ENTERTAINMENT, INC.**" to the following:

William H. Johnson, Esq.
Federal Communications Commission
1919 M Street, N.W.
Room 314
Washington, D.C. 20554

The Honorable James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

The Honorable Sherrie P. Marshall
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

The Honorable Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

The Honorable Ervin S. Duggan
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Louis A. Isakoff BY
Louis A. Isakoff